

MT LEGISLATIVE HISTORY

Chapter 425 1979

Bill H (S) 380

Original bill & hist. ☒ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Mar 02 ☒ C

Hearing Date(s) Feb 14 ☒ C

Mar 16 ☒ C

 ☐ C

 ☐ C

 ☐ C

 ☐ C

 ☐ C

Date Out ☐ C

Feb 14 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee

Report

Fifty-Sixth LEGISLATIVE SESSION

COMMITTEE ON Education - Science

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
SB-367	2/5/79	2/12/79	2/12/79	2/12/79					
SB-374	2/5/79	2/12/79	2/12/79			2/12/79			
SB-376	2/6/79	2/14/79	2/14/79			2/14/79			
SB-380	2/6/79	2/14/79	2/14/79	2/14/79					
SB-382	2/6/79	2/15/79	2/16/79			2/15/79			
SB-386	2/6/79	2/15/79	2/19/79			2/19/79			
SB-393	2/6/79	2/15/79	2/19/79			2/18/79			
HB-369	2/6/79	3/3/79	3/3/79				3/3/79		
HB-376	2/6/79	3/5/79	3/5/79						3/5/79
SB-394	2/7/79	2/15/79	2/16/79	2/15/79					
SB-404	2/7/79	2/16/79	2/16/79			2/16/79			
SB-409	2/7/79	2/16/79	2/19/79			2/18/79			
HB-32	2/7/79	3/2/79	3/6/79					3/3/79	
SB-420	2/8/79	2/16/79	Tabled 2/18/79						
HB-438	2/8/79	3/15/79	3/15/79					3/15/79	
HB-443	2/8/79	3/3/79	3/3/79					3/3/79	

CHAPTER NO. 425.

SENATE BILL NO. 380

INTRODUCED BY HAFFERMAN, TOWE, TURNAGE

IN THE SENATE

February 6, 1979	Introduced and referred to Committee on Judiciary.
February 14, 1979	Committee recommend bill do pass. Report adopted.
February 15, 1979	Printed and placed on members' desks.
February 16, 1979	Second reading, do pass.
February 19, 1979	Considered correctly engrossed.
February 20, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 21, 1979	Introduced and referred to Committee on Judiciary.
March 19, 1979	Committee recommend bill be concurred in. Report adopted.
March 20, 1979	Motion pass consideration.
March 21, 1979	Second reading, concurred in.
March 24, 1979	Third reading, concurred in.

IN THE SENATE

March 24, 1979	Returned from second house. Concurred in. Sent to enrolling. Reported correctly enrolled.
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1 *Sen. 380* BILL NO. *380*
 2 INTRODUCED BY *Jefferson Dan Farnage*
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE CERTAIN LAWS
 5 RELATING TO CASUALTY INSURANCE AND SOVEREIGN IMMUNITY TO
 6 MAKE THE LAW CONSISTENT WITH LIMITS SET BY STATUTE; AMENDING
 7 SECTIONS 2-9-104, 20-3-331, AND 33-23-102, MCA; AND
 8 REPEALING SECTION 33-23-101, MCA."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 33-23-102, MCA, is amended to read:

12 "~~33-23-102. Immunity defense prohibited when liability~~
 13 ~~insured-----existence~~ Existence of insurance not to be made
 14 ~~evident ---reduction-of-award-to-policy-limits.-(1)-Whenever~~
 15 ~~an-insurer---accepts---any---premium---money---or---other~~
 16 ~~consideration---from---a---political---subdivision-of-the-state,~~
 17 ~~municipality, or any public body, corporation, commission,~~
 18 ~~board, agency, organization, or other public entity for~~
 19 ~~casualty or liability insurance, neither such insured nor~~
 20 ~~insurer may raise the defense of immunity from suit in any~~
 21 ~~damage action brought against such insured or insurer, and~~
 22 ~~any agreement in the insurance contract permitting the~~
 23 ~~defense of immunity is void.~~

24 (2) No attempt may be made in the trial of an action
 25 brought against such a political subdivision of the state,

1 municipality, or any public body, corporation, commission,
 2 board, agency, organization, or other public entity to
 3 suggest the existence of any insurance which covers in whole
 4 or in part any judgment or award which may be rendered in
 5 favor of plaintiff.

6 ~~(3)-if-the-court-determines-that-the-defendant-could~~
 7 ~~have-successfully-raised-the-defense-of-immunity-and-if-the~~
 8 ~~verdict-exceeds-the-limits-of-the-applicable-insurance-the~~
 9 ~~court-shall-reduce-the-amount-of-such-judgment-or-award-to-a~~
 10 ~~sum-equal-to-the-applicable-limit-stated-in-the-policy."~~

11 Section 2. Section 2-9-104, MCA, is amended to read:

12 "2-9-104. Limitation on governmental liability for
 13 damages in tort -- petition for relief in excess of limits.
 14 (1) Neither the state, a county, municipality, taxing
 15 district, nor any other political subdivision of the state
 16 is liable in tort action for:

17 (a) noneconomic damages; or

18 (b) economic damages suffered as a result of an act or
 19 omission of an officer, agent, or employee of that entity in
 20 excess of \$300,000 for each claimant and \$1 million for each
 21 occurrence.

22 (2) The legislature or the governing body of a county,
 23 municipality, taxing district, or other political
 24 subdivision of the state may, in its sole discretion,
 25 authorize payments for noneconomic damages or economic

1 damages in excess of the sum authorized in subsection (1)(b)
2 of this section, or both, upon petition of plaintiff
3 following a final judgment. No insurer is liable for such
4 noneconomic damages or excess economic damages unless
5 ~~specifically authorized in the contract of insurance such~~
6 ~~insurer specifically agrees by written endorsement to~~
7 ~~provide coverage to the governmental agency involved in~~
8 ~~amounts in excess of the limitation stated in this section~~
9 ~~or specifically agrees to provide coverage for noneconomic~~
10 ~~damages in which case the insurer may not claim the~~
11 ~~benefits of the limitation specifically waived."~~

12 Section 3. Section 20-3-331, MCA, is amended to read:
13 "20-3-331. Purchase of liability insurance. The
14 trustees of any district may purchase insurance coverage for
15 the district, trustees, and employees against liability for
16 the death, injury, or disability of any person or damage to
17 property. If such insurance is purchased, the trustees shall
18 pay the insurance premium cost from the general fund. The
19 provisions of 33-23-102 and ~~2-9-104~~ shall apply to the
20 provisions of this section."

21 Section 4. Repealer. Section 33-23-101, MCA, is
22 repealed.

-End-

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 14, 1979

The thirty-seventh meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink, Chairman, in room 331 of the capitol building on the above date at 9:33 a.m.

ROLL CALL:

All members were present with the exception of Senator Brown, who was excused.

CONSIDERATION OF SENATE BILL 380:

Senator Hafferman, District 11, Lincoln County, gave an explanation of this bill, which is an act to revise certain laws consistent with limits set by statute. He stated that in 1967, the legislature passed sovereign immunity legislation and he gave a history of this legislation.

Glen Drake, who is a former senator and served on the interim committee in 1967 - 1969 on sovereign immunity laws, gave a statement in support of this bill.

Boyce Clark, representing the Independent Insurance Carriers of Montana, stated that last year they very much supported the sovereign immunity bills that were entered and that he hoped that the committee would look with favor on this bill.

Pat Melby, representing the Alliance of American Insurance, gave a statement in support of this bill.

There were no further proponents and no opponents.

There were a few questions.

A motion was made that the bill do pass. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 376:

Senator McCallum gave an explanation of this bill, which is patterned after a Washington bill. This bill is an act to require recipients of public assistance to report income not previously declared; requiring recipients to repay the state for assistance overpayments, and providing a civil penalty when fraudulent means are used to obtain assistance.

Date Feb 14, 1979

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)			✓
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

DATE February 14, 1977

COMMITTEE ON

VISITORS' REGISTER

[illegible]

(Please leave prepared statement blank)

February 14, 1972

MR. President:

We, your committee on Judiciary

having had under consideration Senate Bill No. 380

Respectfully report as follows: That Senate Bill No. 380

DO PASS

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 380	revise-relating to casualty insurance & sovering immunity	2/21	Hafferman	Friday 3/2	be concurred in	3/16
SB 397	district court programs be subject to county budget laws	2/21	McCallum	Monday 3/5	be concurred in	3/20
SB 454	youth may waive right to counsel unless petition has been filed	2/21	Stimatz	Weds. 3/7	be concurred in	3/14
SB 382	time limitations for a youth delinquent, etc.	2/22	Thomas	Tues. 3/6	concur	3/6
SB 394	extension of constitutional rights for youth detained	2/22	Stimatz	Weds. 3/7	be concurred in	3/14
SB 488	require code committee to review rules - state agencies	2/22	Jergeson	Friday 3/2	as amended be concurred	3/8

MR. YOUNG: That, of course, is a question of judgment. Cases are oftentimes unwarranted. Even the case we were talking about in Livingston.

REPRESENTATIVE KEMMIS: When the jury makes a determination like that they can't make it just because someone was injured, they have to find a certain duty. You have to show duty, you have to show harm and you have to show breach, answered Mr. Young.

MR. KEMMIS: I was surprised to find that driving on a highway was the same as skiing down a mountain, referring to a comment that Mr. Young had said concerning a bill on ski resort liability that Mr. Scully has introduced. Do you really think there is a comparison.

MR. YOUNG: Actually, that was a poor comparison. I agree the guardrail should have been put in. Is that gross negligence. Some would say it is. We are talking about auto cases here, someone hitting a dumptruck or something like that, or a snowplow.

REPRESENTATIVE KEYSER: What would you think about line 17, if plan and design were amended out of this bill? Mr. Turnage answered, that would be a mistake. You would be better off taking maintenance off.

REPRESENTATIVE BARDANOUVE: It is always important to keep up with the latest design. 1980 design is already obsolete.

REPRESENTATIVE ANDERSON: You said the cities and towns would benefit from this bill, yet I didn't hear that much talk about it. Mr. Turnage answered, it is hoped that the insurance premiums would decrease.

REPRESENTATIVE ROTH: What is the ratio on county roads and city roads. The answer was, about 2700 city roads and 65,000 county.

There was no other discussion and the hearing closed on Senate Bill 261.

SENATE BILL NO. 380: Senator Hafferman. This is housekeeping legislation. When we passed this in 1973 we failed to repeal. It will revise laws relating to casualty insurance and sovereign immunity to make the law consistent with limits already set by statute.

GLEN DRAKE: American Insurance Association. Just as backup on this bill, we served on an interim committee that studied sovereign immunity and this was a result

and became the 1977 bill. I don't recall why we did not repeal at that time. We all agreed that it was the intent of the act to give insurance companies that benefit. It merely allows the local government unit to claim immunity. It does not change the status of the law at all. Exhibit #2-A.

With no other discussion the hearing closed on Senate Bill No. 380.

SENATE BILL NO. 153:

Senator Story. This is another house-keeping bill. This was drafted for the Administrative Code Commission. Most of the changes don't amount to much. However, one change is the definition of person to include agency, and number 2, the Attorney General is in support of the Administrative Code procedure in making these rulings. In section 7, it is just to make clear that the Secretary of State has the format to provide notice. On page 17 is the only substantive change. It describes the authority of the Code Commissioner slightly.

REPRESENTATIVE EUDAILY:

Was there a fiscal note with this, and Senator Story said "no".

There was no other discussion and the hearing closed on Senate Bill #153.

BOYCE CLARKE:

Independent Insurance Agents of Montana
I want to present written testimony for two bills, Senate Bill No. 380 and also 261. Exhibit #1 and 2.

SENATE BILL NO. 291:

Senator Lensink: This deals with appointing to fill vacancies in county and legislative offices. At the present time under present law there is 40 days or more, and after 40 days by appointment. Section 1 changes the time span from 40 to 60 days. Section 2 deals with the county commissioner. Section 3 deals with county offices with four year terms. He presented an amendment to the committee for their consideration. (copy attached, exhibit #3)

MIKE McGRATH:

Department of Justice. We asked that this bill be introduced because of the vacancies within county offices. One of the present problems we have is when a candidate dies between the primary and a general election. This would treat county offices the same as state offices. He suggested an amendment on page 4, concerning the justice of the peace positions.

REPRESENTATIVE UHDE:

Questioned the appointment and election to fill a vacancy.

sections 5 and 6 on page 4. Representative Keedy moved to amend the title. The motion to amend carried with Representative Keedy voting "no".

Representative Roth moved "not concurred in as amended". The motion failed.

Representative Roth moved "be concurred in as amended". The motion failed because of a tie vote, 7 yes, 7 no, 2 abstaining and 3 absent. The vote was again called and the motion "not concurred as amended" carried.

SENATE BILL NO. 284:

Representative Keedy moved to insert the language that the Senate had stricken.

The motion carried with Representatives Rosenthal, Anderson and Lory voting "no".

Representative Teague moved "be concurred in as amended". The motion carried with

Representative Lory abstaining. Representative Pavlovich will carry.

SENATE BILL NO. 348:

Representative Keedy moved to amend line 13, by striking "may" and inserting "need".

The motion carried with the vote unanimous. Representative Curtiss voted to amend subsection 1, lines 16, 17, and 18. The motion failed. Representative Iverson moved "not concurred in as amended". The motion carried with a roll call vote, 10 yes, 6 no and 3 absent.

SENATE BILL NO. 374:

Representative Kemmis moved prepared amendments. The motion carried with the

vote unanimous after some discussion.

Representative Uhde moved "be concurred in as amended". The motion carried with the

vote unanimous. Representative Kemmis will carry on the floor.

SENATE BILL NO. 380:

Representative Keyser moved "be concurred in as amended". The motion carried with

the vote unanimous. Representative Lory will carry.

SENATE BILL NO. 202:

Representative Lory moved "be concurred in". The committee discussed the bill at

some length. Representative Anderson moved to pass for the day. The motion carried with the vote unanimous.

SENATE BILL NO. 250:

Representative Curtiss moved to amend.

The motion carried with the vote unanimous

(copy attached) Representative Lory moved "be concurred in as amended". The motion carried with Representative Anderson voting "no". Representative Scully will carry the bill on the floor.

SENATE BILL NO. 380

INTRODUCED BY HAFFERMAN, TONE, TURNAGE

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE CERTAIN LAWS RELATING TO CASUALTY INSURANCE AND SOVEREIGN IMMUNITY TO MAKE THE LAW CONSISTENT WITH LIMITS SET BY STATUTE; AMENDING SECTIONS 2-9-104, 20-3-331, AND 33-23-102, MCA; AND REPEALING SECTION 33-23-101, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-23-102, MCA, is amended to read:

"33-23-102. ~~Immunity defense prohibited when liability~~ Existence of insurance not to be made evident ~~---reduction-of-award-to-policy-limits. (1) Whenever~~ on ~~insurer---accepts---any---premium,---money,---or---other~~ consideration ~~---from---a---political---subdivision-of-the-state, municipality, or any public body, corporation, commission,~~ board, ~~agency, organization, or other public entity for~~ casualty ~~or liability insurance, neither such insured nor~~ insurer ~~may raise the defense of immunity from suit in any~~ damage action brought against such insured or ~~insurer, and~~ any agreement ~~in the insurance contract permitting the~~ defense of immunity is void.

(2) No attempt may be made in the trial of an action brought against such a political subdivision of the state,

municipality, or any public body, corporation, commission, board, agency, organization, or other public entity to suggest the existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of plaintiff.

~~(3) If the court determines that the defendant could have successfully raised the defense of immunity and if the verdict exceeds the limits of the applicable insurance, the court shall reduce the amount of such judgment or award to a sum equal to the applicable limit stated in the policy."~~

Section 2. Section 2-9-104, MCA, is amended to read:

"2-9-104. Limitation on governmental liability for damages in tort -- petition for relief in excess of limits. (1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for:

(a) noneconomic damages; or

(b) economic damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of \$300,000 for each claimant and \$1 million for each occurrence.

(2) The legislature or the governing body of a county, municipality, taxing district, or other political subdivision of the state may, in its sole discretion, authorize payments for noneconomic damages or economic

1 damages in excess of the sum authorized in subsection (1)(b)
2 of this section, or both, upon petition of plaintiff
3 following a final judgment. No insurer is liable for such
4 noneconomic damages or excess economic damages unless
5 ~~specifically--authorized--in--the--contract--of--insurance such~~
6 ~~insurer specifically agrees by written endorsement to~~
7 ~~provide coverage to the governmental agency involved in~~
8 ~~amounts in excess of the limitation stated in this section~~
9 ~~or specifically agrees to provide coverage for noneconomic~~
10 ~~damages, in which case the insurer may not claim the~~
11 ~~benefits of the limitation specifically waived."~~

12 Section 3. Section 20-3-331, MCA, is amended to read:

13 "20-3-331. Purchase of liability insurance. The
14 trustees of any district may purchase insurance coverage for
15 the district, trustees, and employees against liability for
16 the death, injury, or disability of any person or damage to
17 property. If such insurance is purchased, the trustees shall
18 pay the insurance premium cost from the general fund. The
19 provisions of 33-23-102 ~~and 2-9-104~~ shall apply to the
20 provisions of this section."

21 Section 4. Repealer. Section 33-23-101, MCA, is
22 repealed.

-End-